

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMB: 02-0028**

**For The Period: 2000**

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**ISSUES**

**I. Sales/Use Tax: Conversion Vehicle**

**Authority:** IC 6-2.5-3-1; IC 6-2.5-3-2; 45 IAC 2.2-3-5; Tax Policy Directive #8; IC 6-8.1-10-1(e); IC 6-8.1-5-1(b); IC 6-8.1-10-2.1.

The taxpayer protests the assessment of tax on a conversion vehicle.

**STATEMENT OF FACTS**

The taxpayer is in the vehicle (e.g., vans) conversion business. In 2000 the taxpayer purchased a vehicle [hereinafter referred to as "C"] exempt from tax. The taxpayer capitalized the "C" as a capital asset. Taxpayer argues that it sold the "C" in the early months of 2001, and that it was held as inventory.

**I. Sales/Use Tax: Conversion Vehicle**

**DISCUSSION**

As background information about its business, the taxpayer states it does not normally purchase vehicles:

Most of the chassis we convert are not purchased, but assigned from the manufacturer's pool to the [sales] dealer who purchases the vehicle.

The taxpayer explains that the "C" was not available from a manufacturer's pool and therefore the taxpayer "had to purchase the chassis to convert it."

The taxpayer also notes that the vehicle at issue in the protest was, at the time, a new product for the taxpayer:

We are in the vehicle conversion business and have been in the research & development stage of converting [C's]. This specific car was our first demo vehicle. It did go through a conversion process and was sold in February 2001.

The taxpayer protests that although the "C" was capitalized, the "C" was actually purchased for resale, and thus should not be subject to tax:

Obviously, there was an internal communication error that caused this vehicle to be capitalized. But, we do not feel that the misclassification of this vehicle should make it taxable.

At the hearing, the taxpayer stated that part of the mistake in capitalizing the "C" was that they normally do not buy the vehicle chassis and that this was first such "C" that the taxpayer converted.

The auditor argues that use tax is in fact due on the "C," not only because of the capitalization by the taxpayer, but also because the taxpayer's employees put the vehicle to personal use. Indiana Code 6-2.5-3-1 defines "use" as:

- (a) "Use" means the exercise of any right or power of ownership over tangible personal property.

And in pertinent part IC 6-2.5-3-2 states:

- (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.
- (b) The use tax is also imposed on the storage, use, or consumption of a vehicle, aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:
  - (1) is acquired in a transaction that is an isolated or occasional sale; and
  - (2) is required to be titled, licensed, or registered by this state for use in Indiana.

...

Also, Indiana Administrative Code deals with "use tax" and motor vehicles (*See* 45 IAC 2.2-3-5). The personal use of the "C" by various employees also runs afoul of Tax Policy Directive #8, which states that vehicles provided to anyone other than a full-time salesperson (examples provided by the Tax Policy Directive include part-time salespersons, mechanics, and managers) are subject to use tax.

In conclusion, the taxpayer capitalized the "C", thus taking it out of inventory. And, *arguendo*, even if the taxpayer had not capitalized the vehicle, allowing the personal use of the vehicle by anyone other than a full-time salesperson subjects the vehicle to use tax.

The taxpayer also mentions in a parenthetical that it is also protesting the penalty and interest. Interest cannot be waived by statute (IC 6-8.1-10-1(e)), and the taxpayer, who bears the burden

of “proving the proposed assessment is wrong” under IC 6-8.1-5-1(b) has not developed any arguments on the penalty assessed per IC 6-8.1-10-2.1.

**FINDING**

The taxpayer’s protest is denied.

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